

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

KELLY MANN

PLAINTIFF

V.

CIVIL ACTION NO.4:05CV7-WAP-JAD

DONALD CABANA, ET AL

DEFENDANTS

REPORT AND RECOMMENDATION

On October 6, 2005, plaintiff, an inmate of the Mississippi Department of Corrections, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

Mann alleges that he was a passenger on a bus driven by Correctional Officer Willie Winters. He alleges that Winters hit another bus. He says Winter then left the bus and Correctional Officer Eric Ford got on the bus. He claims that he told Ford he was hurt and that Ford did not see to getting him medical treatment. He was then driven to his prison job. He claims he was denied medical treatment, but admitted at the hearing that he was seen in the weeks following the accident by medical staff for his injuries. He disagrees with the failure of the doctors to take x-rays and the choice of medications.

The allegations regarding the bus accident amount to a charge simple negligence which is insufficient to state a § 1983 claim. The medical care claims amount to the inmate's disagreement with the care provided. Since Mann received medical care for minor injuries, he cannot show "deliberate indifference to a serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct 285, 50 L. Ed. 2d 251(1976).

Accordingly it is recommended that the complaint be dismissed with prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 11th day of October, 2005.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE